

§ 4.121

a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 4.121 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 4.112. The Board shall advise the absent party of the content of the proceedings had and that he has 5 days from the receipt of such notice within which to show cause why the appeal should not be decided on the record made.

§ 4.122 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate in the circumstances. Appellant and respondent may offer at a hearing on the merits of such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or hearing officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or hearing officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the

43 CFR Subtitle A (10–1–09 Edition)

particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 4.123 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or hearing officer shall otherwise order.

§ 4.124 Submission of briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Board member or hearing officer at the conclusion of the hearing.

POSTHEARING PROCEDURE RULES

§ 4.125 Decisions.

Decisions of the Board will be made upon the record, as described in § 4.114(b). Copies thereof will be forwarded simultaneously to both parties by certified mail.

§ 4.126 Motions for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon in support of the motion, and shall be filed within 30 days from the date of the receipt of a copy of the Board's decision by the party filing the motion. Reconsideration of a decision, which may include a hearing or rehearing, may be granted if, in the judgment of the Board, sufficient reason therefor appears.

§ 4.127 Dismissals.

(a) *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with the disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the board may, in its discretion, dismiss such an